REMARKS

By the above actions, the specification has been amended. Furthermore, appended hereto are two replacement sheets of drawings, one of which contains an amended Fig. 2. Additionally, also accompanying this response is a certified copy of applicant's priority document. In view of these actions and the following remarks, reconsideration of this application is now requested.

At the outset, the Examiner's indication of allowable subject matter with respect to claims 2-7, 11, and 12 has been noted with appreciation. However, since the other claims are believed to be equally patentable for the reasons set forth in detail below, no action is being taken at this time to place these claims in independent form.

The drawings have been objected to for the reasons indicated in item 2 of the Examiner's Action. While Fig. 2 has been amended to schematically represent the two locks 24 being connected to a common actuator, the other features which the Examiner indicated needed to be shown are, in fact, present in the original drawings. That is, the pivot bearing for the first element 9 is shown as the front connecting rod 13 and rear connecting rod 14 in Figs. 3 & 4 which are shown connected to element 9 by pivot connections. Furthermore, the movable pivot axis is represented by the path of motion 22 in Fig. 4 and the specification has been amended above to make this fact clear.

With regard to the objections to the drawings, with the exception of the changes called for relative to paragraphs [0018] & [0019], all of the changes required by the Examiner have been implemented. However, since "rear" is correct in line 3 of paragraph [0018] (the pivoting movement is about a front pivot axis) and since "front" is correct in line 3 of paragraph [0019] (the hatch pivot about rear pivot axis 17), these paragraphs have been left unamended. Nonetheless, withdrawal of the objections to the specification are in order and are hereby requested.

Turning now to the Examiner's prior art rejections based on the European '598 reference, either alone under § 102 relative to claims 1, 8, and 10 or in combination with the Schenk et al. patent relative to claim 9 under § 103, these rejections are inappropriate and should be withdrawn for the following reasons.

Firstly, it is point out that the European '598 reference is the same as Guillez U.S. Patent No. 6,062,628 and both are described in paragraph [0002] of the present application as disclosing a trunk lid for a convertible roof in which,

> [i]n order to open the stowage space cover with the roof closed as the trunk lid, by pivoting its rear edge around the front body-mounted pivoting axis, it is opened. In this pivoting around the ***fixed*** front pivoting axis, the front edges of the first and the second element move on a respective pivoting path with the pivoting axis as a ***fixed*** pivot center. This ***fixed*** pivoting axis can lead to limitations in the configuration of the motor vehicle, and especially in the design of the stowage space cover, when the front edges do not have an unhindered path of movement and could collide with the rear roof part of the closed roof or with other body parts.

If the Examiner will review the U.S. Guillez patent, she will see that the members 5, 6, are "attached to the bodywork 7 of the vehicle via an articulation 8 at the front of the trunk lid 1" and that "Fig. 6 shows the articulation 8 in detail," (second full paragraph, column 2). Looking to Fig. 6, it can be see that, as described in the quoted language from the present application, articulation 8 forms a body-mounted fixed pivot axis. Thus, the Examiner's assertion that articulation is movable is not understandable and is not supported by the disclosure of Guillez. Thus, since Guillez does not disclose his first element having a recess (part 6) has a "pivot bearing on a front area thereof for connection to the vehicle body and with which the first element is pivotable up at a rear edge thereof, ... wherein said pivot bearing provides a pivoting support of the first element having a movable pivot axis for the pivoting first element," this reference is not able to anticipate the present invention. Furthermore, since Guillez does not recognize the existence of the problem to which the present invention is directed and does not provide any other basis for making articulation 8 movable, Guillez cannot render the applicant's claims obvious either.

As for the Schenk et al. patent relied upon by the Examiner for a teaching of the use of a four bar linkage in Guillez, it is pointed out that this combination suffers from the Examiner's basic error in concluding that the pivot bearing 8 of Guillez is movable. That is, while four bar linkages are well known and have been used in numerous applications in the automotive art, they are not equivalent to a fixed pivot as is used by Guillez, and contrary to the Examiner's assertion does not function "similarly to that of the linkage of EP '598, which is a fixed pivot, not a linkage. That is, given the teaching of a fixed pivot axis in Guillez, it would not be obvious to replace it with a four bar linkage that would create a movable pivot axis absent some teaching or reason for doing so. However, no such teaching or reason can be found in either reference. Furthermore, The mechanism of Schenk et al. is not even comparable to that of the present invention or Guillez in that it is a single element trunk lid not a dual element closure as in the present case and in Guillez. Thus, one of ordinary skill would find no direct applicability of Schrenk et al.'s four bar movement mechanism for their single element trunk lid to Guillez's dual element closure. For example, Schrenk et al.'s trunk lid, in addition to being swung up toward the front for access to the trunk space with the roof up, must also be able to be swung up toward the rear for stowage of the vehicle roof, while such is not the case for the first element 6 of Guillez and the applicant's first element 9, since only the second element 5/10 is swung up toward the rear for stowage of the convertible roof. Thus, while there is a reason for use of a much more complex linkage arrangement in Schrenk et al. vehicle, no similar reason exists for replacing Guillez's simple pivot with a complex linkage mechanism outside of the confines of the disclosure of the present application. Thus, without the impermissible use of hindsight, it simply would not be obvious to replace the fixed pivot of Guillez with the four bar arrangement of the Schrenk et al. patent.

Therefore, for all of the foregoing reasons, the outstanding rejections based upon the Guillez or Guillez and Schrenk et al. patents under §§ 102 and 103 should be withdrawn and such action is hereby requested. Furthermore, in the absence of any new and more pertinent prior art being discovered, this application should now be in condition for allowance.

The prior art that has been cited, but not applied by the Examiner has been taken into consideration during formulation of this response. However, since this art was not considered by the Examiner to be of sufficient relevance to apply against any of the claims, no detailed comments thereon are believed to be warranted at this time.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

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